



Department of the Secretary of State

Regulatory Fairness Board Public Hearing
Friday, November 16, 2012
1:00 – 4:00 p.m.

Public Hearing Notes

In attendance:

Board Members:

Charles E. Summers, Jr. - Chairman
Mark A. Tyler, Oakland - Vice Chairman
Patricia Kuhl
Doug Smith

Other Attendees:

Jay Martin, Small Business Advocate
Debbey French, Information Services Technician
Members of the general public

Chairman Summers opened the hearing with introductions.

Chairman Summers requested comment on the Board's February 24, 2012 public hearing minutes; hearing none, he motioned to approve; seconded by **Mr. Tyler**. Motion approved unanimously.

Ms. Susan Swanton submitted written and oral testimony to the Board (please see Appendix A for her full written testimony). To summarize, **Ms. Swanton** stated the following. She is the Executive Director of the Maine Marines Trades Association (MMTA), founded in 1966 and focused on education/training, legislative/regulatory issues, and best practices. Its 150 members include owners and staff of boat builders, boat yards, marinas, and associated industries on Maine's coast and major lakes. Obstacles to this sector include lack of a skilled workforce, regulatory compliance, high tax and insurance costs, and ethanol-related problems. Regarding workforce training, four-year degrees are appropriate for some but not for all, and more attention is required to apprenticeships and lifelong learning to develop a workforce capable of doing custom work such as boatbuilding, repairs and restorations.

MMTA members believe a balance needs to be achieved between state/federal regulatory burdens that involve health and safety and the environment and the costs imposed by regulators for compliance failures. They are challenges to be experts in their industries and experts in all pertinent and evolving regulations. Busy work day plans change when regulators arrive. Collaboration with regulators improves understanding. MMTA's first-in-the-nation Clean Marinas Program has made a difference, yet despite success stories, the slow economy has dried up its funding. (See the list of twenty regulatory issues Ms. Swanton included with her written testimony).

The Department of Environmental Protection understands her industry's air emissions issues, but with pressure from the Environmental Protection Agency, it may cause damage her industry cannot bear. Her industry has successfully implemented the *SafetyWorks!* program to

ensure compliance with the Occupational Safety and Health Administration (OSHA), yet this agency's focus on enforcement rather than education leads to communication problems and adversarial approaches. The same workers that are meant to be protected by OSHA regulatory enforcement fear for their jobs when OSHA arrives to conduct inspections. When limited dollars are spent on fines, boatyards have difficulty investing in their business and create jobs.

One field of regulations creating many problems is the Department of Conservation Bureau of Parks and Land's Submerged Lands Lease Program, which holds that any docks floats and piers over navigable waters infringe upon Maine citizens' rights to use the submerged lands beneath them. Owners of these facilities are compelled to have very expensive lease agreements with the state, despite their position that such facilities provide access to Maine's waters and therefore should be seen as a public service. The law is complex, confusing, and inequitable. We urge the Board to look into this matter, and are willing to assist as requested to achieve an equitable conclusion. (See the section of M.R.S. Title 12 §1862 Ms. Swanton included with her written testimony.)

Because cross-over jurisdiction between state/federal agencies lead to additional costs, time, and aggravation for their industry, we ask that you consider pursuing any opportunities to improve inter-agency coordination and simplification. The Board's assistance would be truly appreciated

Mr. Smith asked how simplification and streamlining could be specifically accomplished. Ms. Swanton offered the following successful example. 20 years ago, when first addressing submerged lands leases, there were three agencies that required forms to be submitted. They agreed to reduce this to one form that they would share. One person is required to compile a book of information on the wildlife in the area affected. Hazardous waste reporting could be consolidated. The agency her industry deals with most is DEP, especially involving fiberglass boats. Issues included stormwater, wash water, boat pump out stations, spray-painting air emissions, some of which may be combined. Waterfront facilities may need certain consideration. **Mr. Smith** requested the specific regulations needing to be addressed, and Ms. Swanton agreed to provide them.

Mr. Patrick Strauch submitted written and oral testimony to the Board (please see Appendix A for his full written testimony and a letter from Mr. Allan Ryder, General Manager for Timber Resource Group). To summarize, **Mr. Strauch** stated the following. He serves as Executive Director for the Maine Forest Products Council (MFPC), representing paper mills, loggers, sawmills, truckers, wood processors and related industries and owners of over 9 million acres of commercial forest land. Success stories include one noted in his written testimony. One success includes reform of the Land Use Regulation Commission, and the invitation for MFPC to participate in a Department of Transportation advisory group. Communities are coming together in these regions on economic development issues. Certain oversimplified regulations fail to consider the complexity of forest ecosystems. For example, the Maine Forest Practices Act limits clear-cuts, yet this is preferred habitat of snowshoe hare, a source of food for Canadian lynx. Other regulatory concerns include Chapter 315 rules under site location law regarding assessing and mitigating impacts to scenic and aesthetic uses. "Scenic impacts" involve windpower and timber harvesting, and is evolving. Unorganized territories rates are determined at the local level or state average, leading to inequities. Half of the taxes are paid by large landowners. Tax Increment Financing is inconsistent, needing reform. Pine Tree Zone and Energy Maine offer benefits for modernizing manufacturing facilities. We have produced just as much pulp and

paper as ever, but with fewer people due to modernization. Mills in Dover Foxcroft and Verso Paper are investing in such modernization are not necessarily creating jobs, but are key to retaining jobs, and this is an important consideration. He sees more facilities being sited, such as pellet mills and manufacturing facilities. There are many federal issues we face as well.

Mr. Smith inquired about the difference in school assessments. **Mr. Strauch** explained that in the unorganized territories, it is the cost of the school, not a state average that determines tax rates. When **Mr. Smith** asked about the potential of statutory change prospects, **Mr. Strauch** replied possibly. **Mr. Smith** asked whether tree growth regulations are statutory or regulatory; **Mr. Strauch** said both and that most will need to start individually. **Mr. Smith** asked **Mr. Strauch** to indicate the top 3-4 regulatory issues facing your industry with as much detail as possible, and **Mr. Strauch** agreed to poll his membership and will be in touch with the Board. **Secretary Summers** asked for further detail on tax increment financing in unorganized territories. UT is one municipality that crosses seven county lines. Individual counties have TIF authority, but UTs do not have full representation because the UT crosses county lines. Counties have realistic TIFs, but the same limits do not extend to UTs. One needs a tax law background to address this issue. **Secretary Summers** requested that **Mr. Strauch** forward any requests on this matter to the Board and he agreed.

Ms. Brenda Peluso submitted written and oral testimony to the Board (please see Appendix A for her full written testimony). To summarize, **Ms. Peluso** stated the following. She serves as Public Policy Director for the Maine Association of Nonprofits (MANP), representing 770 Maine nonprofits that advance education, healthcare, faith, arts, the environment, and other services. She appreciates the efforts of the Board and Mr. Martin to address issues important to Maine's non-profits. The nonprofit sector in Maine accounts for 17% of its private workforce, but its capacity is growing less in light of the state's financial condition. 32% report deficits and 20% report layoffs. Cuts in government spending are understandable, yet a focus on reducing inefficiencies and cumbersome requirements could channel scarce resources in service to mission.

In response to a 2010 Urban Institute that ranked Maine poorly in regard to issues affecting its nonprofits, Department of Health and Human Services **Commissioner Mary Mayhew** worked with MANP to convene a committee that formed 64 recommendations for streamlining and simplifying the agency's nonprofit contracting system, with four prioritized, that benefit the state and nonprofits. It is important that the Board know of MANP's efforts as it works to find similar administrative efficiencies.

Mr. Smith said that the MANP initiative with the Department of Health of Human Services is admirable and instructive for regulatory reform across state government with applicable methods. Ms. Peluso said that this unfunded process has been helpful in achieving common ground by bringing people together, cutting redundancies in licensing when professionals are nationally accredited. Under MANP's project management, they are defining the roles of MANP, the providers, and the state, she said. **Mr. Smith** said that contracted services involve other agencies, and asked whether other agencies are participating. **Ms. Peluso** said that **Commissioner Mayhew** is pulling in other people such as the Department of Administrative and Finance Services. **Secretary Summers** encouraged **Ms. Peluso** to continue working with **Mr. Martin**.

Mr. Frank Draus submitted written and oral testimony to the Board (please see Appendix A for his full written testimony, including a letter from **Mr. Chris Moran**, an apartment manager in Houlton). To summarize, **Mr. Draus** stated the following. He has been a self-employed businessman for 25 years in Houlton, and is in touch with his legislators. He believes it is difficult for legislators to make progress in helping landlords getting tenants to pay their rent. He has made complaints to the Attorney General's Office and the Board of Judiciary Review regarding unfair treatment by judges and has contacted **Governor LePage** on this issue. **Mr. Draus** reviewed certain parts of his written testimony regarding the definition of "et al", and Class E crimes "theft by deception", and "theft of services", and the letter from **Mr. Moran**. Tenants are using the court system against landlords. Perhaps a law could be established whereby rent in arrears could be collected and placed in escrow. These tenants with rent in arrears should be charged with theft of services. The state can collect fines, so why not for back rent. He cited an example outlining the process by which the tenant benefits from free legal services, failure to pay rent and utilities, and delays in evictions. Meanwhile, he encounters costs of \$5,000 while the judge, lawyer, and Pine Tree Legal receive payment while he does not. These laws need to be changed as they are unfair. He offered complaints about judges regarding determining the meaning of "et al" regarding other people who are not on the lease living in the building. Tenants are receiving many items and services free of charge while landlords face big expenses. He works seven days a week and has taken an additional job to meet expenses so should not have to pay their bills.

Mr. Smith said that this is a complex issue, and perhaps a trade association could play a role. **Mr. Draus** said that he talked with them and that they are afraid. **Mr. Smith** suggested that the group work in concert with the legislature, as the system has been tweaked every few years, added up it results in problems such as those you outline. **Mr. Draus** said that Pine Tree Legal helps these tenants stay on without paying rent. He asserted that these tenants should be able to be prosecuted for theft by deception and theft of services. **Secretary Summers** asked **Mr. Smith** whether he had been involved with any legislation on this matter during his time in the legislature; he replied no. He said this should be approached from a statutory perspective that this Board cannot change. **Mr. Draus** said that the courts are not following their own rules regarding deadlines.

Ms. Jamie Clark submitted written and oral testimony to the Board (please see Appendix A for her full written testimony that includes photos of her store). To summarize, **Ms. Clark** stated the following. With her husband, she has owned the Levant Corner Store since 2008, a convenience store, restaurant, grocery, and agency liquor store in Levant. In her rural area, it is essential for her business to concentrate on developing her restaurant, so she sought an on-premise alcohol license. Her application was denied, as the Bureau of Alcoholic Beverages and Lottery Operations indicated she must first separate her restaurant from her retail operations with an interior wall, and installing a second entrance for her restaurant patrons. This modification would require a separate cash register desk and inhibit restaurant patrons from making purchases from the retail store. She has invited various legislators to tour the building and they agree that such modifications are not practical for her business. She views this as an example of state over-regulation.

Mr. Tyler asked whether she has applied for both an on-premise and off-premise liquor license, and **Ms. Clark** said that they have an off-premise license and is an agency liquor store. She has spoken with the town regarding a beer and wine on-premise license. Her goal is to

capture those customers who would go to Bangor for dine-in pizza. **Ms. Kuhl** asked whether she learned the reason. **Ms. Clark** said the reason given was so the store would “reasonably and responsibly administer” the license. She had asked whether there was any leeway possible and the answer was no. **Ms. Clark** said the biggest difficulty is the requirement for a separate wall from the entrance to the kitchen. **Mr. Tyler** asked about this wall and **Ms. Clark** referenced the floor plan included with her written testimony. **Mr. Tyler** said that there may be a misunderstanding with the inspector, and **Ms. Clark** said that even if the wall went to the counter, would require her customers to conduct business at two separate counters. **Ms. Clark** said she had inquired whether a three-quarter wall is possible and the answer was no. She said the inspector is aware that **Ms. Clark**’s store would responsibly administer this license. **Mr. Tyler** said that he candidly believes that this involves revenue collections, as there is a different tax percentage assessed for on- and off-premise purchases. **Secretary Summers** asked when the inspector first indicated this requirement and **Ms. Clark** said eight months ago. She said the inspector suggested to **Ms. Clark** that she seek the assistance of the Board and **Mr. Martin**, and the inspector said that pricing differences exist between northern and southern Maine. **Secretary Summers** suggested that this would require a law change perhaps through the Veterans and Legal Affairs Committee, and **Ms. Clark** said that she has worked with this committee and because the membership will likely change due to the November election, she feels she is starting all over again. **Secretary Summers** encouraged **Ms. Clark** to work with **Mr. Martin**, and she agreed.

Mr. Raymond Rodrigue submitted written and oral testimony to the Board (please see Appendix A for his full written testimony). To summarize, **Mr. Rodrigue** stated the following. He and his brother have owned and operated Crystal Falls dance hall in Chelsea for 23 years. The State Fire Marshal’s office requires that he install a sprinkler system, but non-profit dance halls are not subject to such regulations. His operation has never had any serious safety violation and his building is especially well designed for public safety, with numerous exits and updated wiring. The ban on public smoking and a slumping economy has reduced the number of people who rely on his establishment as an inexpensive entertainment option. His business pays for and thereby support musical acts and many vendors, and his profit margins are minimal. He requests the assistance of Board to help him stay in business.

Secretary Summers asked whether **Mr. Rodrigue**’s view is that the issue is not one of safety. **Mr. Rodrigue** said that non-profits such as American Legions are not required to install sprinklers. **Mr. Smith** asked whether this is a new requirement. **Mr. Rodrigue** said the fire marshal told him four years ago about this requirement in response to the 2003 nightclub fire in Rhode Island, and he responded by saying that his clientele is very different from the one at that nightclub, that thought the fire was part of the show.

In response to **Mr. Rodrigue**’s testimony, **Mr. Richard McCarthy** of the Maine Fire Marshal’s Office submitted two written documents (please see Appendix A). **Secretary Summers** asked **Mr. McCarthy** why non-profits are exempt. **Mr. McCarthy** said that the 2006 Maine Life Safety Code was adopted in 2007. **Secretary Summers** asked whether this is statute or code and who promulgated this. **Mr. McCarthy** said it is statute which allows through rulemaking for his office to adapt the code, and it is major substantive rulemaking as it involves sprinklering. The requirement changed in response to the (2003) Rhode Island nightclub fire requiring any business exceeding 100-person occupancy to install sprinklers, and the State Fire Marshal’s Office allowed businesses five years to come into compliance. The office wrote an

exception for private clubs that offers events only to their members, not the general public. If a private club rents to the general public, then the building must have a sprinkler system. If the members bring guests then the building must be sprinkled. **Secretary Summers** asked why the safety issue does not apply to members, and **Mr. McCarthy** said he had no role in the legislation. **Secretary Summers** asked if smoking is allowed, and **Mr. McCarthy** said yes in certain members-only sections, but that such laws are under the Attorney General's Office, with some exceptions allowed. **Mr. Smith** asked if this is a "hard and fast" rule. **Mr. McCarthy** said yes, and that of the businesses cited five years ago for needing sprinkler systems, 25 are now in compliance. Some of these reduced their occupancy capacity below 100. The code does not consider whether a facility has additional exits in determining the need for sprinklers. In the Rhode Island case, the numbers of people were below the building's capacity, and these people sought to exit from the doors they entered, as is typical. **Mr. Smith** asked the primary cause of death in the Rhode Island fire, and **Mr. McCarthy** said smoke inhalation. **Mr. Smith** asked if the 100 figure is a national standard and **Mr. McCarthy** said yes. **Mr. Smith** asked if Crystal Falls occupancy maximum is 87 people on its busiest night, would it be exempt, and **Mr. McCarthy** said that his office cannot limit occupancy on a particular number, as we know that very few businesses will turn away people when they have not yet reached legal capacity. If they reduce the space available for this activity, then the requirement will go away. **Mr. Smith** asked a question about how **Mr. Rodrigue** could reduce his capacity, and **Mr. McCarthy** cited an example from a facility in Belfast that reduced its floor space, saying he has not visited Crystal Falls, but his fellow inspectors have, and have been told that they are pursuing price quotes, yet the equipment is not yet installed. **Mr. Smith** asked whether **Mr. McCarthy** knows how much such a system would cost, and **Mr. McCarthy** said that this figure has not been brought to his attention. He said he is happy to work with the owners to find a solution. **Secretary Summers** asked whether a non-profit with legal occupancy of 350 people serving 175 members would need a sprinkler system, and **Mr. McCarthy** said he would need to verify this, but any new facility exceeding 300 people must have a sprinkler system. Factors that affect the ability to exit a building include dancing, drinking, low lighting, and live entertainment. A VFW with 350 people, full lighting, no drinking nor dancing may not require a sprinkler, as every building is slightly different. Piano bars are a consideration. **Secretary Summers** asked whether people drinking beer listening to a jukebox would be at less risk than people dancing to live entertainment, and **Mr. McCarthy** said that people may be more or less aware of the exits in certain scenarios. The authors for such exceptions have retired. **Ms. Kuhl** asked whether **Mr. McCarthy** believes this should be addressed, and he said that there are issues here. **Mr. Tyler** asked about the range of fire suppression systems, and **Mr. McCarthy** said that chemical systems did not work for large space applications. **Mr. Rodrigue** said that non-profits are open to the public, and have live bands with 250 people. If I do this, it is against the law. **Mr. Steve Sanborn** asked whether spouses are considered members, and said what is good for one is good for all. If Crystal Falls is averaging less than 100 people, and American Legion is exceeding that number, what is the reasoning behind this law? **Mr. Draus** said that he closed his facility when he was quoted between \$20,000- \$30,000 for a sprinkler system, that facilities should be grandfathered to avoid putting people out of work, and that these regulations are overbearing.

Ms. Julie O'Brien submitted written and oral testimony to the Board (please see Appendix A for her full written testimony, including letters she sent to **Governor LePage** and the Board of Barbering and Cosmetology, and emails she sent to a board administrator). To summarize, **Ms. O'Brien** stated the following. She has owned a hair salon for 22 years, where self-employed licensed cosmetologists rent their booth space. To work at any licensed salon, they must acquire a booth license form the Board of Barbering and Cosmetology. When she first opened in 1990, applicants could drop off their applications in Augusta and she would receive a call from the licensing office the next business day granting permission for them to begin work. In 2005, she lost one renter who decided not to wait after being told it would take two weeks to approve her booth application. In March 2012, one renter was told it now would take three weeks, as every application is processed in the order they are received and the office staffs only two people to process these applications. Such delays create problems for her business, as she loses customers when she does not have enough cosmetologists, and she loses cosmetologists when she cannot offer consistent customer traffic. She knows of no other licensed profession that requires a similar additional license. In the 1990's when attending all board meetings, legislative and rulemaking hearings, she observed the downsizing of government, and in 2005, she advocated for increasing staff to improve the timeliness of license approvals. This year, licensing fees fell from \$50 to \$20 indicating a lack of intention for any increase in staffing. When the Department of Education was understaffed, it saw problems when overseeing the Maine State Beauty Academy, leading to the Academy's closure. Now, the Barbering and Cosmetology Board oversees the schools yet has decreased its number of inspectors by 50%. She hears of similar problems regarding licensing issues from her salon clientele, yet once they receive their licenses, they are not inclined to file complaints. With today's technology, applicants should be able to submit their applications online with payment and be able to begin work immediately while the licensing department completes its work.

Secretary Summers asked whether people can apply for such licenses online, and **Ms. O'Brien** said she can print applications from the website. **Mr. Smith** said he reviewed the application from the website and it seems very straight-forward, requiring information about education and training. He said that when he began his law practice, such paperwork took much more time, so he is baffled that how a mere reduction in personnel could explain such a slowdown. **Ms. O'Brien** said it has been frustrating, and that a booth rental is similar to an establishment. **Ms. Kuhl** asked about employee vs. contractor status, and **Ms. O'Brien** said it is easier when hiring employees. **Secretary Summers** asked **Ms. O'Brien** to explain the application requirements. She explained that as a shop owner, she must provide information such as a floor diagram, and that her shop stays the same while booth renters come and go. She believes the process is more complicated than is necessary, and that many renters are not moving from a previous location as they are just starting out. **Mr. Smith** suggested that **Mr. Martin** could follow up to get more information for the Board to consider. **Ms. O'Brien** said that each application asks about applicant's criminal records. **Mr. Martin** said that when he made an inquiry with the Department of Professional and Financial Regulation, **Commissioner Anne Head** stated that it is a staffing resource issue, and he will follow up for more information. **Mr. Smith** asked whether the fees are designated for a particular fund. **Secretary Summers** asked **Mr. Martin** to determine this and he agreed.

Mr. Ken Porter offered oral testimony. He and his wife run a part-time concessions stand from June through September, and they must renew their license in January. The cost has risen to \$175

from \$60. They are required to have a food safety manager at each one of their carts, costing \$200. His insurance costs have risen from \$300 to \$650. Other costs are making it difficult for him to stay in business. He is competing with non-profit businesses that are not subject to his level of taxation and regulation, and this creates an unfair business climate.

Mr. Smith asked if he has a food concession, and **Mr. Porter** said yes. **Secretary Summers** suggested to **Mr. Porter** that he work with **Mr. Martin** to provide the Board with more information about this matter, and he agreed.

Ms. Susan Howland submitted written and oral testimony to the Board (please see Appendix A for her full written testimony including a follow-up letter she mailed the Board on November 20). To summarize, **Ms. Howland** stated the following. She is the CEO and CFO of Wayfayer Marine Corporation Camden, celebrating its 50th year in business. It is a full service boatyard that employs 40 full-time year-round employees who repair and retrofit boats and yachts. Running a small business in compliance with the numerous rules, laws, and regulatory agencies is challenging. In the current economic conditions, she sees rising operating costs with fewer staff, making regulatory compliance difficult. She spends a lot of time with regulatory agents when they arrive unannounced, perhaps not always the best use of time for her or the agents. She requested that the Board please ask legislators to consider small business owner perspectives when determining regulatory priorities.

In 2008, the state's Submerged lands Lease Program administered by the Bureau of Parks and Lands removed its lease cap of \$1,200, phasing in increases to the point where she paid over \$10,000 this year, and will ultimately pay \$14,000/year, based upon a percentage of her gross income. This seems to be an unnecessary and unfair tax that offers no value to the waterfront community, so it should be eliminated.

The Department of Environmental Protection is considering implementing a new rule (Chapter 129 Surface Coating Facilities) that will calculate the level of air emissions based upon the amount of spray paint equipment businesses have on hand. The rule assumes that such equipment is used constantly when in fact she uses such equipment only occasionally, painting fewer than six boats per year. Most of these customers are international and have their boats painted anywhere. Such "one-size-fits-all" rules increase her costs and therefore harm her business. Keeping our air clean is important, but we should focus on bulk sources of pollution, and make rules that calculate them fairly.

Maine needs to find ways to be more competitive. Regarding sales and use taxes issues: if one of her customers purchase a boat and leaves the state with it within 30 days, they are not required to pay sales taxes. This policy encourages boatyard customers to take out of state the work they need done. Labor rates are higher at Rhode Island boatyards but because their regulations are lower and sales taxes are nil, she cannot compete with them. These folks seeking her products and services are the same who buy homes here in Maine, so these policies are shortsighted in light of the economic multiplier effects. There is much that can be done to encourage this industry and preserve jobs. She has good partnerships with regulators but she needs to be able to concentrate on running her business.

Ms. Kuhl asked about controlling air emissions. **Ms. Howland** said she is not a scientist but that an aggregate goal would likely work better, and what is proposed is not workable.

Mr. Frederic Licht submitted written and oral testimony to the Board (please see Appendix A for his full written testimony). To summarize, **Mr. Licht** stated the following. He and fellow hearing attendee **Mr. Steve Blais** are practicing professional engineers offering testimony on behalf of the Maine Real Estate and Development Association (MREDA). They will share their experiences that demonstrate unintended consequences that are negatively impacting businesses and economic growth. The Site Location of Development Act regulates all large development projects, and Chapter 500/502 Stormwater Rules are intertwined. The Department of Environmental Protection (DEP) enforces the Environmental Protection Agency's (EPA) Clean Water Act requirements. Their industry encourages development in areas previously developed, such as urban centers and brownfields to revitalize blighted areas and reduce dependency on automobiles. Stormwater rules invoked through site law require complete stormwater mitigation even when changing from one type of impervious surface to another (for example, gravel to pavement). One example cited illustrates how this rule discourages development in downtown areas and encourages sprawl.

Mr. Smith asked why the stormwater stakeholder group was put on hold. **Mr. Licht** said he does not know. The groups were well-received. He believes it was tabled but the Department is working on rules to reinvigorate the group. **Mr. Smith** said that the Legislature could not handle this matter so it was sensible to establish the stakeholder group, and asked whether this is the logical starting point. **Mr. Licht** said yes, because the issues become very technical. **Mr. Smith** asked **Mr. Martin** to determine the status of the stakeholder group.

Ms. Gina Martinez offered oral testimony. To summarize, **Ms. Martinez** stated the following. With her husband John, she owns and operates two businesses in Old Orchard Beach, and they belong to a local economic development organization. She runs a Class A Lounge, originally allowing smoking, since prohibited, yet the license fee has not changed. Smokers must be 20 feet away from entrances, so her customers can use her back patio, where they can be served and monitored without becoming a public nuisance. Only those 21 years old and older are allowed in her lounge. Local police agree that it is better to keep smokers off the street. She pays \$2,200 for her license. Her sprinkler system cost \$25,000. Her dance license costs \$117/year, which is really a public safety license for inspectors to check for sprinklers and fire extinguishers. She has worked in lounges lacking a dance license and should patrons dance to the jukebox, the staff is required to tell the patrons to stop or the business faces a \$500 fine. Only one sign is allowed in her businesses' window advertising alcohol, despite her 5,500 square feet of windows, and alcohol cannot be viewed from outside, which she says is impractical for her facility. There are now only two class locations in Maine for alcohol servers to be trained in safe practices, increasing costs for employers. BMI and ASCAP music unions seek \$4,000/year for her to play music, including any music broadcast on televisions including commercials. She argues that musicians have been paid by those producing the broadcasts. Other businesses such as hair salons play music, but businesses like hers are targeted, and she refuses to pay, because she disagrees that this is stealing. She works as a licensed dietician for assisted living facilities during the day. She is required to complete 10 continuing education units (CEUs) per year at \$6 each. Her license is now \$150/year. Registered nurses who administer drugs pay only \$30/year for their licenses and have no CEU requirements, despite their \$60-70,000/year incomes. The licensing office said that the office charges these rates to cover regulatory costs.

Mr. John Martinez offered oral testimony. To summarize, **Mr. Martinez** stated the following. He said that he would like to keep his lounge open an hour later each night. This

would help prevent everyone leaving bars at the same time. He asks his customers what they would like to have him offer, and they consistently ask for games, but even games like Yahtzee are prohibited. The ability to make money simply selling alcohol is dwindling, especially as the cost of Jack Daniels has increased by 33%, essentially a tax on the wholesale price. He cannot purchase this at a price any lower than the general public. He would like to be in compliance but still offer what his customers want. Large corporations are making tens of millions, but he is not allowed to offer games of chance. The state could benefit from such opportunities, but the state is worried that businesses will be out of compliance. With the revenues earned, the state could hire inspectors who could close those businesses that fail to comply. He said that his cost for liability insurance has risen from \$600 in 1995 to \$2,600 today. His business has decreased while his costs have increased. He needs the ability to make money, so he encourages the state to hire people to keep businesses in compliances. He and his wife are very active in the community and intend to remain. Alcohol is very restricted out of fear of non-compliance.

Ms. Martinez said that ASCAP applies a national rating even to seasonal businesses like hers, and seeks to charge her for a Las Vegas nightclub when she is open only eight nights in April. The ASCAP representative said they do not charge by the hour. She saw this business as her career change in 2003, but has not proved to be so.

Motion by Secretary Summers to adjourn.

Seconded by Mr. Smith.

Voted: unanimous.

NEXT MEETING: Thursday, December 20, 2 p.m. – 4 p.m., Office of the Secretary of State, Conference Room, 103 Sewall St., Augusta

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APPENDIX A

Written Testimony

1. Ms. Susan Swanton, Maine Marine Trades Association
2. Mr. Patrick Strauch, Maine Forest Products Council (includes letter from Mr. Allan Ryder)
3. Ms. Brenda Peluso, Maine Association of Non-Profits
4. Mr. Frank Draus (includes letter to the Board from Mr. Chris Moran)
5. Ms. Jamie Clark
6. Mr. Raymond Rodrigue
7. Mr. Richard McCarthy, State Fire Marshal's Office (supplements)
8. Ms. Julie O'Brien
9. Ms. Susan Howland, including follow-up letter dated November 20, 2012
10. Mr. Frederic Licht
11. Ms. Gina Martinez (follow-up testimony dated 11/19/12)